

### **REMARKS**

This is in response to the Office Action mailed on June 9, 2009. A Petition for a three-month extension of time is filed herewith to extend the deadline for response from September 9, 2009, to December 9, 2009.

With this Amendment and Response, claim 9 is amended and new claims 17-18 are added. All amendments are fully supported by the original specification and drawings. No new matter is added. Claims 1-18 are pending in this application. In light of the foregoing amendments and following remarks, Applicants respectfully request advancement of this application to allowance.

#### **Initial Matter**

Applicant notes that claims 1-16 were previously pending in the patent application, but that only claims 1-13 were addressed in the Office Action. Consideration of claims 14-16 is requested. It is noted that claim 14 refers to and incorporates all of the elements of independent claim 1. Therefore, claim 14, as well as claims 15-16 that ultimately depend therefrom, are allowable for at least the same reasons as claim 1, discussed below.

#### **Claim Objection**

Claim 9 was objected to for containing parenthesis at lines 6 and 8 to describe various panels of the blank. With this Amendment, claim 9 has been amended to remove the parenthesis. The objection is now moot. Withdrawal of the objection is respectfully requested.

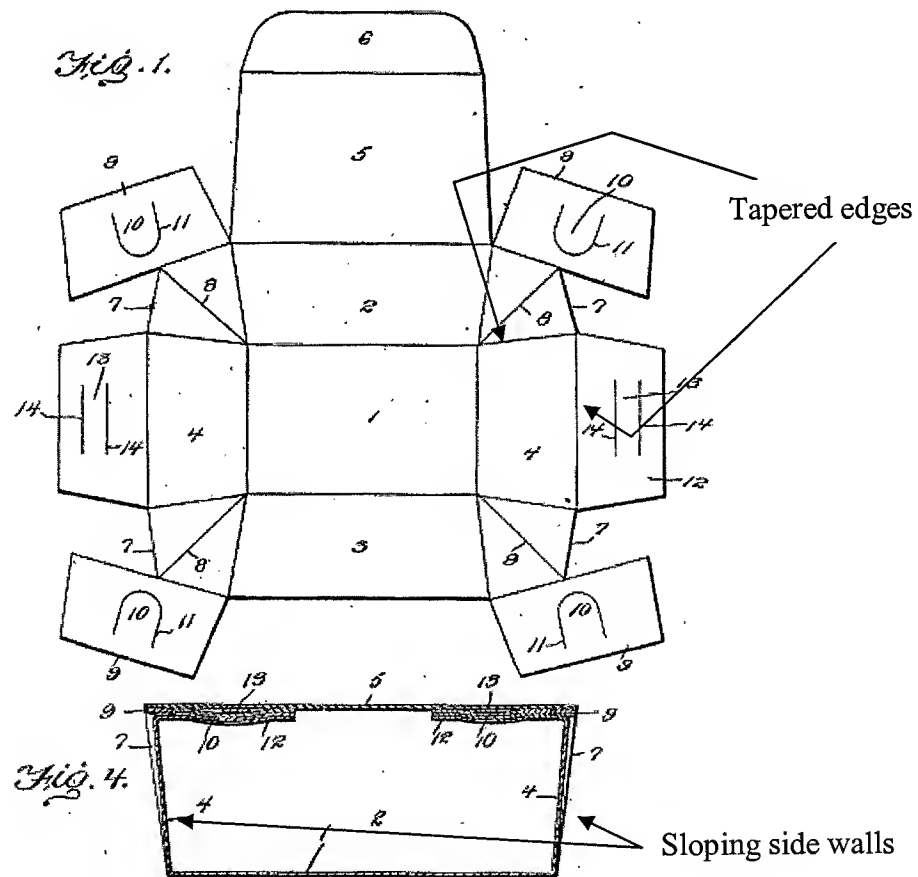
#### **Claim Rejections – 35 U.S.C. § 103**

##### ***A. Claims 1-7 and 9-13***

In the Office Action, claims 1-7 and 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chase (U.S. 1,058,408) in view of Beerend (U.S. Patent No. 3,155,304). Applicants respectfully traverse the rejection. Reconsideration is requested because Chase and Beerend, whether considered individually or in combination, both fail to disclose all elements of the claims.

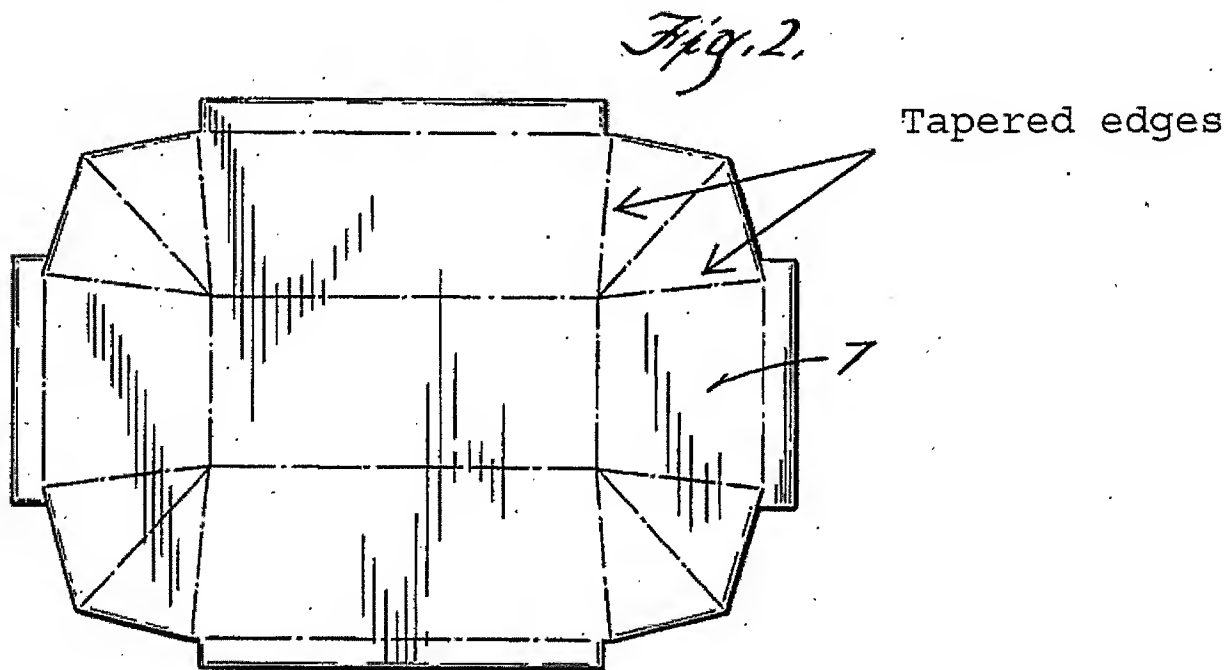
Independent claim 1 is directed to a corrugated or other suitable carton board tray. The tray includes: "a rectangular base, upright side walls, upright end walls, and a locking assembly that holds the side walls and the end walls in upright positions with the corners of the tray and therefore the corners of the baked food product produced in the tray being straight and squared," (emphasis added).

Chase fails to disclose or suggest a tray having a rectangular base, side walls, end walls, and a locking assembly that are configured to produce a food product that has corners that are straight and squared. In contrast, Chase discloses sloping side walls (see the shapes of the ends and side walls in Figures 1, and the shape of the assembled box shown in Figure 4) that, necessarily, form corners that are not "straight and squared" corners. Figures 1 and 4 of Chase are reproduced below, which have been annotated to indicate the tapered edges and side walls of the box.



This is not a trivial difference—"straight and squared" corners are an important feature of the subject invention. In this regard, page 8, lines 10-19 of the subject specification describes that: *"As is described in more detail hereinafter, the tray is formed so that the corners between (a) the base 5 and the side walls 7, (b) the base 5 and the end walls 9, and (c) the side walls 7 and the end walls 9, are straight and square. This construction ensures that a baked product produced in the tray has straight and squared corners and straight sides and therefore has a high degree of dimensional accuracy. As is indicated above, this is an important consideration in terms of cutting the baked product into portions that have a uniform size and shape."*

Beerend also fails to disclose or suggest a tray having a rectangular base, side walls, end walls, and a locking assembly that are configured to produce a food product that has corners that are straight and squared. In contrast, Chase discloses a replaceable liner 6 having sloping sidewalls. As shown in Figure 2, reproduced below, the blank 7 is folded with tapered angles. Figure 2 has been annotated to indicate the tapered edges defined by folds in the blank.



Therefore, both Chase and Beerend fail to disclose or suggest a tray including a rectangular base, side walls, end walls, and a locking assembly that are configured to produce a product having straight and squared corners. Further, there would have been no reason for a

person of skill in the art at the time of the invention to modify Chase and/or Beerend to include such features.

Also, as acknowledged in the Office Action, Chase also fails to disclose that the folding box is used for baking. Rather, Chase discloses only that the box is useful to “protect its contents.” Page 1, lines 83-86.

Accordingly, Applicants respectfully request reconsideration and allowance of independent claim 1, as well as claims 2-7, and 9-11 that ultimately depend therefrom. Further, claim 12 refers to and incorporates the elements of claim 1. Therefore, reconsideration and allowance of claim 12, as well as claim 13 that depends therefrom, are also respectfully requested.

Applicants do not otherwise concede the correctness of the rejection and reserve the right to raise additional arguments in the future, if necessary.

**B. Claim 8**

In the Office Action, claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chase in view of Beerend and further in view of Groh (U.S. Patent No. 5,050,766). Applicant respectfully traverses the rejection.

Claim 8 ultimately depends from independent claim 1. As discussed above, Chase and/or Beerend fail to disclose or suggest all elements of independent claim 1. Furthermore, Groh also fails to supply the deficiencies of Chase and Beerend with respect to claim 1.

Groh is directed to a collapsible ice chest. In contrast to claim 1, which describes a tray for baking a food product, the chest of Groh is designed to “store materials to be cooled.” See, Abstract. It would not have been obvious to use an ice chest for baking a food product, and therefore would not have been obvious to combine Groh with Chase and/or Beerend to form the tray recited in claim 1.

Claims 7 and 8 also recite: “gusset corners in a lower section of the tray,” and “wherein the gusset corners extend no more than one third of the height of the tray.” It would not have been obvious to combine the teachings of Chase, Beerend, and Groh to result in the invention recited in claim 8 (including claims 1 and 7).

As noted in the Office Action, Chase and Beerend both fail to disclose gusset corners that extend no more than one third of the height of the tray. Rather, Chase and Beerend disclose full

height gussets, rather than partial gussets in the lower sections of the tray. The Office Action suggests that it would have been obvious in view of Groh to modify Chase and/or Beerend to include gusset corners that extend no more than one third of the height of the tray.

Applicant respectfully disagrees. A person of skill in the art would not have been motivated to reduce the height of the gusset corners. The primary purpose of a gusset tray is to hold liquid, such as a cake batter, in the tray. It is counter-intuitive to lower the height of a gusset tray and rely on a tight fit for the top two thirds of the corners.

Groh describes an ice chest that can hold an amount of already frozen ice. Since the ice is already frozen, short gussets are sufficient, as they do not need to hold in a large amount of liquid. It would not have been obvious to modify Chase and/or Beerend in view of Groh to include short gussets as recited in claim 8.

Moreover, all of Chase, Beerend, and Groh describe complicated arrangements. It is not obvious how the three different arrangements could be combined to result in a functional tray, let alone a tray having all of the features recited in claims 1, 7, and 8.

Accordingly, reconsideration and allowance of claim 8 is respectfully requested. Applicant does not otherwise concede the correctness of the rejection and reserves the right to raise additional arguments as may be necessary.

#### New Claims

With this Amendment, new claims 17 and 18 are added. Claim 17 is directed to a corrugated or other suitable carton board tray for baking a food product in the tray. Claim 17 further recites "a locking assembly that holds the side walls and the end walls in upright positions with the corners of the tray . . . , wherein the locking assembly releasably holds together the end walls and the side walls of the tray so that the end walls and the side walls can be folded outwardly and downwardly to provide access to the food product that has been baked in the tray, and wherein the locking assembly includes locking tabs on the side walls and slots in the end walls that receive the locking tabs and releasably hold together the end walls and the side walls," (emphasis added).

The significance of this preferred locking assembly is evident from the paragraph bridging pages 5 and 6 of the specification, as follows: "*The applicant has found that the above-*

*described tray, and more particularly the end wall construction of the upwardly folded base flaps and the inwardly folded side wall flaps that are held together by the described locking assemblies of locking tabs and slots, makes it possible to form straight and squared corners between the side walls and the end walls of the tray."*

The cited references fail to disclose or suggest all elements of claim 17. For example, Chase describes tabs 10 and locking flaps 12 having slits 14, but the tabs 10 and the slits 14 are not on the side walls and the end walls of the tray as defined in claim 17. See, for example, Figure 4 of Chase.

Further, page 1, lines 14-17 of Chase describes the locking assembly as "peculiarly arranged locking tongues and flaps adapted to be assembled quickly without tearing or mutilation of the blank and which will form a fastening means not easily opened." It is clear from this statement that the particular locking assembly of Chase is a key feature of the Chase invention and it is unlikely that a skilled person would seek to modify the Chase locking assembly to the arrangement defined in claim 17.

Beerend and Groh fail to supply the deficiencies of Chase with respect to claim 17. Accordingly, Applicant respectfully requests consideration and allowance of claim 17, as well as claim 18 that depends therefrom.

CONCLUSION

In view of the above amendments and remarks, Applicant respectfully requests a Notice of Allowance. There may be additional reasons that the pending subject matter is patentably distinct from the cited references in addition to those discussed herein. Applicant reserves the right to raise any such arguments in the future. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

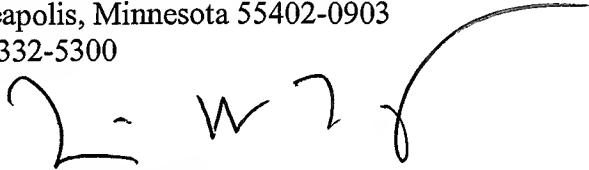
Additionally, the Commissioner is hereby authorized to charge any additional fees which may be required for entry of these papers or to credit any overpayment to Deposit Account No. 13-2725.

Respectfully submitted,

MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, Minnesota 55402-0903  
(612) 332-5300

Dated: December 9, 2009

By

  
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Brian H. Batzli  
Reg. 32,960  
BHB:BAT:ae